

arisen; and that his estate was not one upon which the judgment of Stone & McWilliams could give them a lien.

This objection points to a portion of our law of a most important bearing, and of frequent application; and yet is one which has not, that I know of, been any where carefully examined and considered. I shall, therefore, avail myself of this occasion to take a more comprehensive view of the subject than might otherwise have been deemed necessary for the determination of this case.

* According to the law of England, a judgment of a Court of common law operates as a general lien upon all the real estate of the defendant, which may be taken in execution and sold, or delivered under an *elegit*, or extended by a statute merchant or statute staple for the satisfaction of such judgment or recognizance. This lien is not the result of any principle of the common law applicable indiscriminately to all judgments in favor of a creditor; but arises out of the liability of the real estate to be taken in execution and sold at the common law, or out of the statutes that give the *elegit*, and recognizances called statute merchant and statute staple, by virtue of which the lands of the debtor were generally made liable to be sold, delivered, or extended; 13 Ed. 1, c. 18; 11 Ed. 1; 13 Ed. 1, stat. 3; 27 Ed. 3, c. 8 and 9; 36 Ed. 3, c. 7; 23 Hen. 8, c. 6; *Forum Rom.* 87; and although only a moiety of the land could be taken under an *elegit*; yet the lien is general and comprehends all the lands held by the debtor, as well those which he had at the time of entering up the judgment as those which he may have subsequently acquired. And this lien fastens upon the real estate on the day the judgment is rendered. 2 *Inst.* 469; *Gilb. Execu.* 37; *Gilb. Court of Excheq.* 93; *Jefferson v. Morton*, 2 *Saund.* 6; *Underhill v. Devereux*, 2 *Saund.* 69, 71. This judgment lien is a uniform consequence of the real estate being liable to be taken and extended under an execution issuing upon such judgment. Wherever then such a liability exists, the lien arises as the constant incident of such a judgment; and where the property cannot be taken in execution, there is no lien. It will, therefore, be sufficient in this, or any similar case, to shew the liability of the real estate to be so taken in execution, to establish the existence of the lien. *Powel Mortg.* 255, n. K 273, n. O; *Harris v. Saunders*, 10 *Com. Law Rep.* 373.

The lien upon a real estate, which is incident to a judgment against its owner, extends no further than to cover the whole of that right which he himself might have voluntarily transferred to his creditor in satisfaction of his debt; its operation is always limited by the extent of the debtor's power of alienation. The alienation of lands is either voluntary, as by deed *inter vivos*, or by last will and testament; or it is involuntary as by attachment of law.